

maltitol, etc.), as well as other sweetening agents (e.g., monosaccharides, polysaccharides, etc.), have been used to good advantage as substitutes for sucrose in a variety of foodstuffs. However, the ingestion of higher doses of such sweetening agents and/or the lack of systemic adaptation to such sweetening agents in sensitive individuals may result in unpleasant side effects, which include diarrhea and symptoms associated with diarrhea (e.g., specification, p. 2, ll. 13-21).

The recognition in the art that the consumption of certain sweetening agents can produce undesirable gastrointestinal side effects is described in the specification, and is further evidenced in Exhibits A-C, attached herewith. Exhibit A shows a candy wrapper warning that the presence of the polyol ingredients lactitol and maltitol may produce a laxative effect. Exhibit B shows a candy wrapper warning that the presence of the polyol ingredients sorbitol or mannitol, or the presence of hydrogenated starch hydrolysate, may produce a laxative effect. Exhibit C shows candy wrappers from two foodstuffs produced by the same manufacturer, one of which contains a warning against the possibility of a laxative effect, the other of which does not. The foodstuff bearing the warning contains the sucrose replacement maltitol, whereas the foodstuff without a warning contains ordinary sugar (i.e., sucrose).

As noted in the specification, Applicant has made the surprising and unexpected discovery that “the unpleasant side effects of diarrhea associated with consumption of foodstuffs sweetened by sweetening agents such as polyols, monosaccharides, and polysaccharides ... can be reduced or eliminated by incorporating inulin into the sweetening compositions in certain minimum amounts” (specification, p. 4, ll. 3-8, emphasis added). More specifically, Applicant has made the surprising and unexpected discovery that a “minimum amount” of inulin sufficient to reduce diarrhea induced by sweetener consumption corresponds to “at least about 25 percent by weight of the combination of sweetening agent or agents and inulin” (e.g., specification, p. 7, ll. 3-7, emphasis added).

Accordingly, in view of the surprising and unexpected results provided by the minimum amounts of inulin recited in each of the claims, the assertion by the Office that “the amounts [of inulin] employed are seen to be no more than a matter of choice and

well-within the skill of the art” (Office Action, p. 2, last paragraph) is respectfully traversed.

Each of the pending claims recites an amount of inulin (at least 25 percent by weight) sufficient to reduce diarrhea induced by sweetener consumption. In contrast, none of the applied references, alone or in combination, teaches or suggests the use of inulin in such an amount.

Claim Rejections – 35 U.S.C. § 103 (a)

The rejection of claims 1-29 under 35 U.S.C. § 103(a) as being unpatentable over James (United States Patent No. 5,721,004), Teeuwen et al. (abstract), Thon (abstract), and Birch et al. (abstract) in view of Laurenzo et al. (European Patent Application No. EP 0 787 745 A2) is respectfully traversed. None of the applied references, alone or in combination, teaches or suggests the claim recitation that inulin be present in an amount which comprises at least about 25 percent by weight of a combination of sweetening agent or agents and inulin—that is, in an amount sufficient to reduce diarrhea induced by sweetener consumption. Indeed, none of the applied references even acknowledges or recognizes that diarrhea induced by sweetener consumption can be reduced or eliminated through the use of inulin. This teaching is limited to Applicant’s disclosure and, in accordance with MPEP 2143, cannot provide the basis for a motivation to modify or combine references.

James describes methods for producing fat-free and low-fat viscous dressings using inulin as a fat mimetic. Teeuwen et al. describes the use of inulin as a partial replacement for fat and sugar, and refers to the combination of inulin with an intense sweetener. Thon describes the use of inulin as a sugar substitute used in combination with a sweetener. Birch et al. describes the composition and properties of diabetic jams. Laurenzo et al. describes processes for clarifying crude inulin extracts. None of these references makes any reference whatsoever to alleviating symptoms of diarrhea induced by sweetener consumption. Moreover, none of these references contains any teaching or suggestion that a minimum amount of inulin used in combination with a sweetener is sufficient to reduce or eliminate diarrhea induced by consumption of the sweetener. Furthermore, none of these references contains any teaching or suggestion

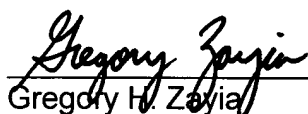
that an efficacious minimum amount of inulin corresponds to at least about 25 percent by weight of a combination of sweetener and inulin.

For at least the reasons, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of the applied references taken alone or in combination. Accordingly, withdrawal of this ground of rejection is respectfully requested.

In view of the Remarks set forth above, Applicant respectfully submits that the present invention is in condition for allowance. Early notification to such effect is earnestly solicited.

If for any reason the Examiner feels that the above Remarks do not put the claims in condition to be allowed, and that a discussion would be helpful, it is respectfully requested that the Examiner contact the undersigned agent directly at (312)-321-4257.

Respectfully submitted,



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Agent for Applicant

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EXHIBIT A

The Fannie May Legacy

Quality isn't just a word at Fannie May, it's a way of life...and has been for over 75 years. By using only the freshest ingredients, Fannie May continues to make the finest candies available... as good as the day H. Teller Archibald opened his first Fannie May Shop in 1920 in Chicago, Illinois.

Our commitment to freshness continues and you will taste the difference. We guarantee it.

Enjoy the quality of Fannie May Candies with these sugar free fruit-flavored pops in an assortment of grape, lemon, lime, orange, cherry, and pineapple. Fannie May Candies... quite simply the finest candies available.

Sugar free candies are made for those who prefer less sugar or are on a sugar-restricted diet. Although this is not a reduced calorie product, it will not promote tooth decay. This product may produce a laxative effect after excessive consumption. People on a restricted diet should consult their physician before consuming.



Ingredients: Lactitol, Maltitol Syrup, Aspartame, Citric Acid, Natural and Artificial Flavor, Yellow #5, Yellow #6, Red #40, Red #3, Blue #1

Phenylketonurics: Contains Phenylalanine

Manufactured by Fannie May Candies, a division of Archibald Candy Corporation Chicago, IL 60607

© 1996 Fannie May Candies

Nutrition Facts

Serving Size 1 piece (10.5 g)
Servings per Container 12

Amount Per Serving

Calories 42 Calories from Fat 0

% Daily Value*

Total Fat 0g 0%

Saturated Fat 0g 0%

Cholesterol 0mg 0%

Sodium 0mg 0%

Total Carbohydrates 10g 3%

Dietary Fiber 0g

Sugars 0g

Protein 0g

Vitamin A 0% • Vitamin C 0%

Calcium 0% • Iron 0%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

	Calories	2000	2500
Total Fat	Less than	65g	80g
Sat. Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2400mg	2400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram

Fat 9 Carbohydrates 4 Protein 4

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EXHIBIT B

"One Taste... Your Best Advertisement!"®

EDA Candies are manufactured with sorbitol, a cool refreshing sugar substitute which occurs naturally in many fruits and berries. Sorbitol has been thoroughly tested and widely used for over 100 years. EDA candies are made without artificial sweeteners and contain no saccharin, acesulfame potassium or aspartame.

Dry Mouth?, Get your juices flowing with delicious EDA candies!
"Melts in your mouth not in the wrapper!"

Nutrition Facts

Serving Size 5 pieces (15g)	
Servings Per Container about 11	
Amount Per Serving	
Calories 60	
	% Daily Value*
Total Fat 0g	0%
Cholesterol 0mg	0%
Sodium 0mg	0%
Total Carbohydrate 15g	5%
Sugars 0g	
Sorbitol 15g	
Protein 0g	

Not a significant source of Calories from Total Fat, Saturated fat, Dietary Fiber, Vitamin A, Vitamin C, Calcium, and Iron.

*Percent Daily Values are Based on a 2,000 calorie diet.

Available in 21 mouth water flavors....

MIXED FRUITS	TROPICAL MIX	OLD-TIME MIX
Cherry	Banana	Butterscotch
Green Apple	Butter Rum	Chocolate
Lemon	Coconut	Cinnamon
Lemon-Lime	Lemon-Lime	Icy Peppermint
Orange	Orange	Licorice
Raspberry	Pina Colada	Real Coffee
Strawberry	Pineapple	Root Beer
Watermelon	Watermelon	Spearmint

Ingredients:
 Sorbitol, gum arabic, citric acid,
 natural and artificial flavors, colors added.
 (FD&C Red # 40, Blue #1, Blue #2, Turmeric)

EXCHANGE INFO: 1 serving=1 fruit exchange.
 These exchanges are useful for people with
 diabetes and those in weight loss programs.

DIABETICS: This product may be useful in
 your diet on the advice of a physician.
 This is not a reduced calorie food.

As in all candies made with sorbitol, mannitol, or hydrogenated starch hydrolysate, **EXCESSIVE CONSUMPTION MAY HAVE A LAXATIVE EFFECT IN SENSITIVE PERSONS.** According to the FDA, 50 grams (17 candies- about 3 servings) is well tolerated by most individuals. Since sensitivity varies among individuals, we recommend starting with one or two candies and gradually increasing as desired. A tolerance can be developed in much the same way as with fiber.

Questions or comments about this product?
 Call toll-free weekdays: (9-3 EST) 1-800-438-3327

Manufactured by
 LEHMAN SUGAR FREE CONFECTIONS, INC.
 BROOKLYN, NY 11203 (800-GIFT-EDAS)

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EXHIBIT C

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MILK CHOCOLATE NOVELTY
INGRED.: SUGAR, MILK, COCOA
BUTTER, CHOCOLATE LIQUOR,
LECITHIN (AN EMULSIFIER) AND
VANILLIN (AN ARTIFICIAL FLAVOR).



0 52745 05642 2
FANNY FARMER CANDIES - A Div. of
Archibald Candy Corp., Chicago, IL 60607

28g (1 OZ.)

SUGAR FREE NOVELTY

INGREDIENTS: MALTITOL, COCOA
BUTTER, CHOCOLATE, CALCIUM
CARBONATE, DAIRY OIL, CALCIUM
CASEINATE, SOY LECITHIN-AN
EMULSIFIER, VANILLA.



0 52745 05389 6

ARCHIBALD CANDY CORP.

CHICAGO, IL 60607

NET WT 1 oz (28g)

NOT FOR USE BY A DIABETIC WITHOUT
THE ADVICE OF A PHYSICIAN. EXCESS
CONSUMPTION MAY HAVE A LAXATIVE
EFFECT.